

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARMEN TAVAREZ-VARGAS, :
Plaintiff, :
-v- : 21 Civ. 9876 (JPC)
CULTURE CARTON LLC, :
Defendant. :
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JOHN P. CRONAN, United States District Judge:

Plaintiff filed the Complaint in this action on November 23, 2021. Dkt. 1 (“Compl.”). The Complaint alleges that “Plaintiff is a visually-impaired and legally blind person” and that Defendant’s website “denie[s] access to the equal enjoyment of goods and/or services offered on the website” because of Defendant’s “failure to design, construct, maintain, and operate its website to be fully accessible to—and independently usable by—Plaintiff and other blind or visually-impaired people who use screen-reading software.” *Id.* ¶ 1. The Complaint alleges claims under Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.*, under the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.*, and for declaratory relief. Compl. ¶¶ 37-55. Defendant was served with the Complaint on January 12, 2022, making its answer due by February 2, 2022. Dkt. 5. The deadline for Defendant to respond to the Complaint has passed and Defendant has neither appeared in this action nor answered the Complaint. On February 3, 2022, the Court ordered Plaintiff to move for default judgment as to Defendant. Dkt. 6. Plaintiff filed a motion for default judgment and supporting papers on February 23, 2022. Dkts. 11-14.

It is hereby ORDERED that, by March 3, 2022, Plaintiff shall file supplemental briefing on

whether Defendant's website constitutes a "place of public accommodation" such that the Complaint properly alleges a claim under the ADA. *See, e.g., Winegard v. Newsday LLC*, No. 19 Civ. 4420 (EK), 2021 WL 3617522, at *1 (E.D.N.Y. Aug. 16, 2021) ("[T]he ADA excludes, by its plain language, the websites of businesses with no public-facing, physical retail operations from the definition of 'public accommodations.'"); *Martinez v. MyLife.com, Inc.*, No. 21 Civ. 4779 (BMC), 2021 WL 5052745, at *2-3 (E.D.N.Y. Nov. 1, 2021) (same); *Gil v. Winn-Dixie Stores, Inc.*, 993 F.3d 1266, 1277 (11th Cir. 2021) ("[W]ebsites are not a place of public accommodation under Title III of the ADA."), *opinion vacated on mootness ground son panel reh'g*, 2021 WL 6129128 (11th Cir. Dec. 28, 2021); *see also U.S. National Bank of Oregon v. Independent Insurance Agents of America, Inc.*, 508 U.S. 439, 447 (1993) ("[A] court may consider an issue antecedent to and ultimately dispositive of the dispute before it, even an issue the parties fail to identify and brief." (quotations and alterations omitted)). Plaintiff shall serve the supplemental briefing on Defendant and file proof of service on the docket by March 7, 2022.

It is further ORDERED that Plaintiff serve Defendant via overnight courier with a copy of this Order and file proof of such service on the docket by February 28, 2022.

SO ORDERED.

Dated: February 24, 2022
New York, New York


JOHN P. CRONAN
United States District Judge